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4 UNITED STATES DISTRICT COURT  
5 WESTERN DISTRICT OF WASHINGTON  
6 AT TACOMA

7 DAVID Q. WEBB,

8 Petitioner,

9 v.

10 GARY SIMPSON,

11 Respondent.

CASE NO. C19-5561 BHS

ORDER ADOPTING REPORT  
AND RECOMMENDATION

12 This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable David W. Christel, United States Magistrate Judge, Dkt. 31, and  
13 Petitioner’s emergency motion pursuant to *Perez v. Ledesma*, 401 U.S. 82 (1971) and  
14 *Moore v. Sims*, 442 U.S. 415 (1974), Dkt. 32.

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16 Petitioner David Q. Webb (“Petitioner”), a pre-trial detainee incarcerated in the  
17 Kitsap County Jail, filed this federal habeas action pursuant to 28 U.S.C. § 2241. Dkt. 1.  
18 When Petitioner initiated this action, his underlying criminal case was ongoing in state  
19 court. *Id.*; *see also* Dkt. 32 (indicating state case was active as of January 7, 2020).

20 On January 6, 2020, Judge Christel issued the R&R recommending that  
21 Petitioner’s federal petition be dismissed without prejudice for failure to exhaust state  
22 remedies. Dkt. 31. In relevant part, Judge Christel concluded that “[t]he record fails to

1 show Petitioner has availed himself of any state court remedies.” *Id.* Judge Christel also  
2 noted that nothing prevents Petitioner from filing motions or appeals in the state court,  
3 and therefore he has not shown an absence of available state corrective process. *Id.*

4 On January 7, 2020, Petitioner filed an emergency motion pursuant to *Perez v.*  
5 *Ledesma*, 401 U.S. 82 (1971) and *Moore v. Sims*, 442 U.S. 415 (1974). Dkt. 32.  
6 Petitioner states that his “circumstances have become extremely untenable” and alleges  
7 that he is being prosecuted in bad faith causing extreme harassment and irreparable  
8 injury. *Id.* at 1. On January 14, 2020, the Government responded. Dkt. 33. On January 27,  
9 2020, Petitioner filed an untimely reply. Dkt. 35.

10 In this case, the Court agrees that Petitioner has failed to exhaust state court  
11 remedies and failed to establish an absence of state corrective process. Therefore, the  
12 Court adopts the R&R in full.

13 Petitioner’s emergency motion cites Supreme Court precedent presumably in favor  
14 of authorizing this Court’s intervention in his state criminal matter. Dkt. 32. The Court,  
15 however, does not reach the merits of this issue because the record reveals that on  
16 February 3, 2020, after the date Petitioner filed his emergency motion and untimely reply,  
17 the Kitsap County District Court for the State of Washington entered an order dismissing  
18 all counts against him with prejudice on motion of the prosecuting attorney. *See*  
19 [https://www.kitsapgov.com/dc/Pages/ecourt\\_Search.aspx](https://www.kitsapgov.com/dc/Pages/ecourt_Search.aspx), populated with search terms  
20 for case no. 23428401, last visited February 4, 2020. The Court takes judicial notice of  
21 Petitioner’s state court records. *Shetty v. Wells Fargo Bank, NA*, 696 F. App’x 828, 829  
22 (9th Cir. 2017) (district court did not abuse discretion by taking judicial notice of state

1 court proceedings). Because the record demonstrates that Petitioner's state case has been  
2 dismissed, there is no longer a live controversy warranting this Court's potential  
3 intervention.

4 Accordingly, the Court having considered the R&R, Petitioner's emergency  
5 motion, the docket of the Kitsap County District Court, and the remaining record, does  
6 hereby find and order as follows:

- 7 (1) The R&R is **ADOPTED**;
- 8 (2) Petitioner's federal habeas petition is **DISMISSED without prejudice**;
- 9 (3) A Certificate of Appealability is **DENIED**;
- 10 (4) Petitioner's *in forma pauperis* status is **REVOKED** for purposes of appeal;
- 11 (5) Petitioner's emergency motion, Dkt. 32, is **DENIED as moot**; and
- 12 (6) The Clerk shall enter **JUDGMENT** and close the case.

13 Dated this 6th day of February, 2020.

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16 BENJAMIN H. SETTLE  
17 United States District Judge  
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